

STATE OF MICHIGAN
COURT OF APPEALS

LARRY ECKLER and LUCYLE ECKLER, d/b/a
ECKLER'S PRODUCE & GREENHOUSE,

UNPUBLISHED
July 15, 2004

Plaintiffs-Appellants,

v

HOWARD TOWNSHIP BOARD OF
TRUSTEES, MOOSE LAKE LLC, and THOMAS
MARTIN,

No. 247284
Cass Circuit Court
LC No. 02-000770-AA

Defendants-Appellees.

Before: Fort Hood, P.J., Donofrio and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted from the circuit court order that dismissed their zoning appeal of right pursuant to MCR 2.116(C)(4) (lack of subject matter jurisdiction) and that denied their application for leave to appeal. Plaintiffs, owners of a produce farming operation, filed a claim of appeal in circuit court challenging defendant Howard Township Board of Trustees' ("township board") decision to approve a conditional use permit that allows defendant Moose Lake LLC to conduct a sand and gravel mining operation on forty acres of land adjacent to plaintiffs' farming operation. After defendant township board successfully argued that the circuit court lacked subject matter jurisdiction because plaintiffs failed to timely file their claim of appeal, plaintiffs filed an application for leave to appeal in the circuit court. Upon the circuit court's denial of plaintiffs' application for leave to appeal, plaintiffs filed the instant appeal. Because we find that plaintiffs timely filed their appeal of right in the circuit court, we reverse.

Plaintiffs argue the circuit court erred in finding that plaintiffs did not file their appeal of right within the twenty-one day filing period set forth in MCR 7.101(B)(1). The circuit court ruled that plaintiffs did not file their appeal within twenty-one days of the zoning administrator's reduction to writing of defendant township board's approval of the conditional use permit and therefore, the circuit court lacked jurisdiction. The issue of whether the circuit court lacked jurisdiction is subject to review de novo. *Sun Communities v Leroy Twp*, 241 Mich App 665, 668; 617 NW2d 42 (2000).

The circuit court erred when it concluded that plaintiffs did not comply with the twenty-one-day filing period set forth in MCR 7.101(B)(1)(a), that provides as follows:

(B) Time for Taking Appeal.

(1) *Appeal of Right*. Except when another time is prescribed by statute or court rule, an appeal of right must be taken within

(a) 21 days after the entry of the order or judgment appealed from[.]

In *Davenport v City of Grosse Pointe Farms Bd of Zoning Appeals*, 210 Mich App 400, 405; 534 NW2d 143 (1995), the plaintiffs brought an appeal in the circuit court after the defendant zoning board of appeals denied their request for a zoning variance. *Id.*, 403-404. After the circuit court reversed the zoning board's decision and granted the variance, the defendant zoning board and several of the plaintiffs' neighbors brought separate appeals challenging the circuit court's decision. *Id.*, 404. The defendant zoning board argued on appeal that the circuit court lacked subject matter jurisdiction because the plaintiffs filed their claim of appeal on February 26, 1992, more than twenty-one days after the defendant zoning board denied their variance request at its January 27, 1992 meeting. *Id.* Significantly, however, the defendant zoning board did not certify the minutes of its January 27, 1992 meeting until February 25, 1992. *Id.*

This Court found that the plaintiffs' claim of appeal was timely because it was filed within twenty-one days from the date the meeting minutes were certified. In particular, this Court stated "[a]lthough the issue has not yet been addressed in the context of zoning appeals, we believe that the date of certification of the minutes from the January 27, 1992, meeting most appropriately serves as the date of entry of the order or judgment appealed from for purposes of MCR 7.101(B)(1) and MCR 2.602(A)." *Id.*, 404-405.

The circuit court in the present case distinguished the facts in *Davenport* from those in the case at bar by pointing out that in *Davenport* there was no other writing that could constitute an order, whereas, here, the zoning administrator's July 18, 2002 notification letter to defendant Moose Lake LLC serves as the entry of an order. The *Davenport* opinion does not express the reasoning the circuit court adopted. Although this Court did explain that orders must be reduced to writing, it never qualified its ruling by stating that its holding was limited to those cases where the only written document constitutes the zoning board's meeting minutes. Nor did this Court indicate that the issuance of just any writing would serve as the triggering event for measuring the limitation period in MCR 7.101(B)(1). Rather, it stated that in the context of zoning appeals, the certified meeting minutes "most appropriately serve[] as the date of entry of the order or judgment appealed from for purposes of MCR 7.101(B)" Thus, we conclude the circuit court incorrectly interpreted *Davenport* by reading a limitation never expressed by this Court into the opinion. Notice to an applicant of a successful outcome and the entry of the township board's decision into the public record are two different events, like the granting of a motion for summary disposition before the circuit court and the subsequent entry of the dispositional order. It is the latter event rather than the former that triggers the appeal period.

Because the circuit court's interpretation is not supported by law, and because this Court is bound by the principle of stare decisis to follow the binding precedent of *Davenport*, MCR

7.215(I)(1), we conclude that the date of the township board's certified meeting minutes constitute the date of entry of the order or judgment for filing an appeal pursuant to MCR 7.101(B). Accordingly, because plaintiffs timely filed their claim of appeal, the circuit court erred in dismissing their claim for lack of subject matter jurisdiction pursuant to MCR 2.116(C)(4).

Because we conclude the circuit court erred in dismissing plaintiffs' appeal of right, we need not reach the alternate issues plaintiffs present challenging the circuit court's decision to deny their application for leave to appeal.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Karen M. Fort Hood

/s/ Pat M. Donofrio

/s/ Stephen L. Borrello